

2009 DRAFTING REQUEST

Assembly Amendment (AA-SB399)

Received: 03/18/2010

Received By: mshovers

Wanted: As time permits

Companion to LRB:

For: Donna Seidel (608) 266-0654

By/Representing: Chris

May Contact:

Drafter: mshovers

Subject: Local Gov't - bonding

Addl. Drafters: emueller

Extra Copies:

Submit via email: YES

Requester's email: Rep.Seidel@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Municipalities may act as conduit bond issuers

Instructions:

See attached. References in attachment are to DOA's mark-up of SB 399.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	mshovers 03/18/2010	csicilia 03/18/2010	jfrantze 03/18/2010	_____	lparisi 03/18/2010		
/1	mshovers 03/19/2010	nnatzke 03/22/2010	rschluet 03/22/2010	_____	lparisi 03/22/2010	lparisi 03/22/2010	

FE Sent For:

<END>

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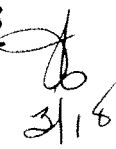
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1/2	mshovers	1/11 gjs 3/18		cm 3/18			
1/1 MES 3/18/10		10	3/18				

FE Sent For:

<END>

Shovers, Marc

From: McKinny, Chris
Sent: Wednesday, March 17, 2010 12:55 PM
To: Shovers, Marc
Subject: FW: AB 605/SB 399
Attachments: AMENDMENT LANGUAGE FOR SB 399 (031710).docx; Drafting Instructions for Amendment to SB 399 (031710).docx

Hey Marc,

Here is the additional language, per my voicemail. Please give me a call when you get a chance-6-0654. Thanks again for everything.

Chris

From: Andrew T. Phillips [mailto:atp@phillipsborowski.com]
Sent: Wednesday, March 17, 2010 10:09 AM
To: McKinny, Chris
Cc: 'Liz Stephens'; Buhrandt, Jeff
Subject: AB 605/SB 399

Hi Chris –

Attached are drafting instructions and amendment language that we have prepared to address some of the concerns that Administration raised. We would appreciate you forwarding these to Marc Shovers at your earliest convenience. I will follow up with you by phone once I am off a 10:00 conference call, but Liz and I are preparing a memo discussing why the other modifications that Administration has suggested are inappropriate. In addition, there may be an issue that is appropriate for Leg Council to address and I will discuss that with you later.

Let me know if you have any questions – I will call shortly.

Thanks –

Andy

Andrew T. Phillips
Phillips Borowski, S.C.
10140 N. Port Washington Road
Mequon, WI 53092
(262) 241-1900
Fax: (262) 241-1910

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3/17/2010

Drafting Instructions for Amendment to SB 399 (as amended by Senate Amendment 2)

March 17, 2010

*dot
use marked-up
copy of SB 399*

1. Modify language regarding those bonds which are exempt from state taxation. ① ②
Adopt those changes identified by the DOA document beginning on Page 14 and continuing through the following page of their document that relate to the tax exempt status of certain bonds.

RATIONALE: DOA identified possible instances in which those projects located out-of-state may be able to make the legal argument that had their project been located in Wisconsin, they would have received an exemption from state taxes and therefore their project should receive a tax exemption from Wisconsin. We wish to prevent this from happening.

2. Ensure that any changes to the majority Wisconsin membership of the Commission Board require legislative approval.

Not needed We believe the legislation makes majority Wisconsin on the Board a permanent requirement – we don't read the legislation as allowing a commission to circumvent this requirement through amendment to the commission agreement. Unless LRB tells us differently, we will not modify the language in SA 2. IF LRB believes that the board structure is not permanent, include the following language after the last sentence on Page 6 of the document provided by DOA: Any change modifying majority requirements of the Board must be approved by the Joint Finance Committee under the 16.505/16.515 passive review process. If this addition does not belong in this location, please include it where it is more appropriate.

*it is
permanent
in the statute*

RATIONALE: We wish to ensure that the Board retains a majority Wisconsin membership unless otherwise authorized by the Legislature.

3. Require annual budget and audit reports be submitted to the Department of Administration and the Legislative Audit Bureau.

4. Include a policy statement within the legislation similar to that contained in sec. 66.1101(1).

5. Amend the Attorney General review process to provide that an amendment to the commission agreement that adds members to the commission requires Attorney General approval.

can't do RATIONALE: We wish to ensure that the commission membership structure remains consistent with the legislation throughout the life of the commission. However, we want to ensure that a "participant" is not considered a "member" for purposes of requiring Attorney General approval according to this amendment and would like LRB to confirm that fact. In addition, we agree with a change to allow the Governor to consult with any state department or agency during the review process.

can't do

AMENDMENT LANGUAGE FOR 2009 SENATE BILL 399 (as amended by Senate
Amendment 2)

March 17, 2010

Amending page 5, immediately following line 13 of SB 399

Not done

(1m) It is declared to be the policy of the state to encourage and promote the development of industry to provide greater employment opportunities and to broaden the state's tax base to relieve the tax burden of residents and home owners. It is further declared to be the policy of the state to encourage and promote cooperative action between and among counties, cities, villages and towns designed to efficiently finance projects that provide a public benefit. It is further recognized that counties, cities, villages and towns have broad power to act individually and in collaboration with each other for the commercial benefit and the health, safety and public welfare of the public. However, to implement that power, legislation authorizing the joint exercise of financing powers is necessary. It is, therefore, the policy of the state to authorize two or more counties, cities, villages or towns to form a commission for purposes of carrying out the intent of this section and the expenditure of funds for that purpose is determined to be a public purpose.

Amending page 5, lines 22-24 and page 6, line 1 of SB 399

... the attorney general, upon submission of an agreement, shall transmit a copy of the agreement to the governor who ~~shall~~ may consult with any state department or agency-affected by the agreement. ...

Amending page 6, lines 3-5 of SB 399

(b) No approval is required under this subsection for an amendment to an agreement to take effect, ~~or for an addition or withdrawal of a member,~~ unless the amendment is to add a member or unless as otherwise required by the terms of the agreement.

Amending Section 4 of Senate Amendment 2 (Page 6, line 24 of SB 399)

(d) No commission may be created under this section unless its agreement is submitted to the attorney general, under sub. (2), before the first day of the 5th month beginning after the effective date of this paragraph ... [LRB inserts date]. Only one Commission may be formed under this section. If more than one agreement is submitted to the Attorney General before the first day of the fifth month beginning after the effective date of this paragraph, the Attorney General must give preference to the agreement that submits with its documents demonstrations of support from at least one statewide organization located in this state representing political subdivisions and having political subdivisions among its membership.

Amending Section 6 of Senate Amendment 2 (Page 11, line 4 of SB 399)

tax-exempt

(e) ~~If applicable,~~ the commission shall disclose to any person who purchases a bond issued under this section that the interest received on such a bond is exempt from taxation, as provided in ss. 71.05(1)(c)10., 71.26 (1m)(k), 71.36(1m), and 71.45(1t)(k).

Amending Page 13, lines 6-7 of SB 399

(c) A copy of the budget and audit shall be sent to the governing body of each political subdivision which is a party to the agreement that created the commission and filed with the secretary of the department of administration and the legislative audit bureau.

Amending Section 13 of Senate Amendment 2 (Page 14, line 12 of SB 399)

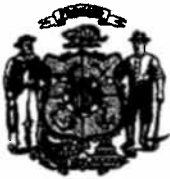
Modify consistent with the Department of Administration's suggested modifications to clarify that the exemption is granted only for those projects located within the state.

- No drafting needed*
6. Page 13, Lines 8-11 already requires a political subdivision to approve a project in every state outside of Wisconsin. Senate Amendment 2 requires that all political subdivisions in this state approve a project. We believe that all projects for which bonds are issued by the Commission must receive approval by at least one political subdivision in which the project is located. Unless LRB believes this is not the case, we do not believe that additional modifications need to be made. *agree + true*

- No drafting needed*
7. We believe that the broad definitions in sec. 19.32 for "authority" and sec. 19.82 for "governmental body" clearly include a commission formed under the legislation and, therefore, the commission would be subject to public records and open meetings laws. However, if LRB believes that clarification is necessary, we would like language explicitly stating that a commission formed under the legislation is subject to public records and open meetings laws. *agree not necessary*

8. Limit the number of Commissions that can be created. We have proposed language indicating that only one commission can be formed under the legislation and have created a "tie breaker" in the event there is more than one applicant.

9. Amend the legislation to reflect that only in instances where the interest on bonds issued through a commission is exempt from income taxation is the commission required to provide notice to the bondholders of that fact.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1957/2
MES&EVM:cjs:rs

~~REDACTED~~

Compiled to include Senate Amendment 2

November 18, 2009 - Introduced by Senators KREITLOW, PLALE, HOPPER, DARLING, TAYLOR, SCHULTZ, HANSEN and OLSEN, cosponsored by Representatives SEIDEL, HILGENBERG, DEXTER, FIELDS, BERCEAU, JORGENSEN, PETROWSKI, SMITH, STASKUNAS, BENEDICT, HINTZ and HRAYCHUCK. Referred to Joint Survey Committee on Tax Exemptions.

1 AN ACT *to amend* 32.02 (1), 66.0303 (1) and 71.36 (1m); and *to create* 66.0304,
2 71.05 (1) (c) 10., 71.26 (1m) (k) and 71.45 (1t) (k) of the statutes; *relating to*:
3 authorizing two or more cities, villages, towns, or counties, or a combination of
4 such political subdivisions, to create a commission to issue conduit revenue
5 bonds and exercise eminent domain authority and exempting from taxation
6 interest on such bonds.

Analysis by the Legislative Reference Bureau

This bill authorizes two or more political subdivisions to enter into an agreement to create a commission to issue a type of municipal bonds referred to as conduit bonds. A commission is created using the current law procedures for intergovernmental or interstate cooperation agreements. Generally, conduit bonds (bonds) are bonds issued by a unit of government under which the proceeds of the bond sale are transferred to a private entity (the borrower), who must be "qualified" under federal law. The borrower uses the proceeds to finance a project that has a public benefit as authorized under state or federal law. In effect, the unit of government serves as a conduit between the borrower and the bond purchaser. Generally, the borrower pays a lower interest rate on the bond proceeds than it would have paid if it had borrowed the money on the open market because the bonds issued by a unit of government may be exempt from federal or state taxation.

Under this arrangement, the borrower is solely responsible to repay the bonds and interest on the bonds from revenue generated by the project financed by the bond

SENATE BILL 399

sale. Security for the bonds is supported by collateral or revenues of the borrower who receives the proceeds from the bond sale. Collateral for the bonds may be a building, equipment, or a revenue stream generated by the borrower's construction or remodeling of a project. The borrower, not the unit of government that issues the bonds, is responsible for all debt service payments to the bondholders. And the borrower, not the unit of government that issues the bonds, is liable to the bondholders if the bonds are not paid off.

A commission created as authorized under the bill is a unit of government and a body corporate and politic that is completely separate from the creating political subdivisions and from the state. The bill defines political subdivision to mean any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or similar governmental entity in another state. A political subdivision that is a party to an agreement is considered to be a member of a commission. Before an agreement may take effect, it must be approved by the attorney general.

A commission is governed, under the bill, by a board and the board members are appointed under the terms of the agreement creating the commission. The agreement may also provide for an additional political subdivision to become a member of a commission, or for a member to withdraw from a commission. At all times, however, at least one member of a commission must be a political subdivision that is located in this state.

Under the bill, a commission is granted all of the powers that are necessary or convenient to carry out the purposes described in the bill. Primarily, a commission is authorized to issue bonds or refunding bonds to finance or refinance a project, including funding a reserve fund or capitalized interest, payment of costs of issuance and other costs related to the financing or refinancing, and to enter into agreements related to the issuance of bonds, including liquidity and credit facilities, remarketing agreements, currency exchange agreements, commodity swap agreements, and other hedge agreements. The bill defines a project as any capital improvement, investment or program of investment, purchase of receivables, property, assets, commodities, bonds or other revenue streams or related assets, working capital program, or liability or other insurance program, located within or outside of this state.

Other powers of a commission include the authority to employ or appoint agents, employees, finance professionals, and special advisors; the authority to establish and collect fees, plus administrative expenses, from a participant who benefits from the commission's services, or services provided by an outside entity; and, at the request of a participant, the authority to combine and pledge revenues of multiple projects for repayment of one or more series of bonds. The bill defines a participant as any public or private entity, including federally recognized Indian tribe or band, that contracts with a commission for the purpose of financing or refinancing a project that is owned, sponsored, or controlled by the entity.

Unless the bond resolution states otherwise, bonds issued by a commission are the obligation of the commission, to be paid solely out of amounts received by the commission from revenues derived from the project that is financed or refinanced,

SENATE BILL 399

or by another agreement entered into or investment made that relates to, and is pledged to, the bonds. The state, and the political subdivisions who are parties to the agreement creating the commission, are not liable on the bonds or other contracts entered into by a commission, nor are any of the commission's board members personally liable on the bonds unless the personal liability or accountability is the result of willful misconduct.

The commission is required to annually prepare a budget, and maintain an accounting system in accordance with generally accepted accounting principals. The bill also requires the commission to have its financial statements and debt covenants audited annually by an independent certified public accountant, except that the commission may decide, by unanimous vote of its board, to have an audit performed every two years. The commission must send a copy of its budget and audit to the governing body of each political subdivision which is a party to the agreement which created the commission.

The bill authorizes a commission to be dissolved, according to the terms of the agreement under which it was created, if the commission provides for the payment of its bonds, including interest, and the performance of its other contractual obligations. The attorney general must approve the dissolution of a commission. The bill also contains a state pledge under which the state agrees and pledges that it will not limit, impair, or alter the rights and powers of a commission before the commission has met and discharged the bonds, including interest, and has fulfilled its contractual obligations.

Any interest that is generated by the bonds is exempt from taxation. The method of issuing bonds and entering into of contracts related to those bonds that is created in the bill is a complete alternative method to all other methods under current law which authorize the issuance of bonds by a unit of government.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 32.02 (1) of the statutes is amended to read:

2 **32.02 (1)** Any county, town, village, city, including villages and cities
3 incorporated under general or special acts, school district, the department of health
4 services, the department of corrections, the board of regents of the University of
5 Wisconsin System, the building commission, a commission created by contract under

SENATE BILL 399**SECTION 1**

1 s. 66.0301, with the approval of the municipality in which condemnation is proposed,
2 a commission created by contract under s. 66.0303 that is acting under s. 66.0304.
3 if the condemnation occurs within the boundaries of a member of the commission. or
4 any public board or commission, for any lawful purpose, but in the case of city and
5 village boards or commissions approval of that action is required to be granted by the
6 governing body. A mosquito control commission, created under s. 59.70 (12), and a
7 local professional football stadium district board, created under subch. IV of ch. 229,
8 may not acquire property by condemnation.

9 **SECTION 2.** 66.0303 (1) of the statutes is amended to read:

10 66.0303 (1) In this section, "municipality" has the meaning given in s. 66.0301
11 (1) (a), except that with regard to agreements described in s. 66.0304, "municipality"
12 includes a political subdivision, as defined in s. 66.0304 (1) (f).

13 **SECTION 3.** 66.0304 of the statutes is created to read:

14 **66.0304 Conduit revenue bonds. (1) DEFINITIONS.** In this section:

15 (a) "Agreement" means a contract entered into under this section by the
16 political subdivisions which form a commission. The contract may be amended
17 according to the terms of the contract, and the amended contract remains an
18 agreement.

19 (b) "Bond" means any bond, note or other obligation of a commission issued
20 under this section, including any refunding bond or certificate of participation or
21 lease-purchase agreement.

22 (c) "Commission" means an entity created by two or more political subdivisions,
23 who contract with each other under s. 66.0301 (2) or 66.0303 (2), for the purpose of
24 issuing bonds under this section.

25 (d) "Member" means a party to an agreement.

SENATE BILL 399

1 (e) "Participant" means any nongovernmental ~~public or private~~ entity, including a federally
2 recognized Indian tribe or band, that contracts with a commission for the purpose of
3 financing or refinancing a project ~~that is owned, sponsored, or controlled by the~~
4 ~~public or private entity.~~

5 (f) "Political subdivision" means any city, village, town, or county in this state
6 or any city, village, town, county, district, authority, agency, commission, or other
7 similar governmental entity in another state.

8 (g) "Project" means ~~any capital improvement, investment or program of~~
9 ~~building, or equipment that is owned by, or leased to,~~
10 ~~investment, purchase of receivables, property, assets, commodities, bonds or other~~
11 ~~a participant and located within this state or, to the extent~~
 ~~revenue streams or related assets, working capital program, or liability or other~~
 ~~the commission finds and determines that a public purpose is served~~
 ~~insurance program, located within or outside of~~ this state.

 (ge) "Public official" means an individual who holds, or has held, a local public
office, as that term is defined in s. 19.42 (7w), for a political subdivision in this state.

(1M) The legislature hereby finds and determines [recite facts and conclusions that support conclusion that bond proceeds will be used for a public purpose and promote the general welfare of the state. See State ex rel. Hammermill v. La Plante, 58 Wis 2nd 32.

12 (h) "Revenue" means all moneys and fees received from any source by a
13 commission.

14 (2) ATTORNEY GENERAL REVIEW. (a) Before an agreement may take effect, the

15 proposed agreement shall be submitted to the attorney general who shall determine
16 whether the agreement is in proper form and compatible with the laws of this state.

17 The attorney general shall approve any agreement submitted under this subsection
18 unless the attorney general finds that it does not meet the conditions set forth in this

19 section and details in writing addressed to the concerned political subdivisions'
20 governing bodies the specific respects in which the proposed agreement ~~fails to~~ ^{does not} meet

21 conditions specified in this section ~~the requirements of law~~ ~~Failure to disapprove an agreement submitted under this~~

22 ~~subsection within 90 days of its submission constitutes approval.~~ The attorney

23 general, upon submission of an agreement, shall transmit a copy of the agreement

24 to the governor ^{may} ~~shall~~ consult with any state department or agency affected by

SENATE BILL 399

SECTION 3

1 ~~the agreement.~~ The governor shall forward to the attorney general any comments
2 the governor may have concerning the agreement.

3 (b) ~~No approval is required under this subsection for an amendment to an~~
4 agreement to take effect, or for an addition or withdrawal of a member, unless
5 required by the terms of the agreement. A commission may not be dissolved under
6 sub. (4m) without the approval of the attorney general, who shall certify to the
7 commission and the participants that the dissolution resolution provides for the
8 payment of any outstanding bonds or other obligations of the commission.

9 (3) CREATION AND ORGANIZATION. (a) Two or more political subdivisions may
10 create a commission for the purpose of issuing bonds by entering into an agreement
11 to do so under s. 66.0301 (2) or 66.0303 (2) , except that upon its creation all
12 of the initial members of a commission shall be political subdivisions that are located
13 in this state . A commission that is created as provided

14 in this section is a unit of government, and a body corporate and politic, that is
15 separate and distinct from, and independent of, the state and the political
16 subdivisions which are parties to the agreement.

(b) A commission shall be governed by a board, the members of which shall be
appointed under the terms of the agreement . A majority of the board members
shall be public officials ~~or current or former employees~~ of a political subdivision that
is located in this state.

Q: What is governance
structure required for a
governmental unit?

Q: Is defeasance
required, or
merely
assumption of
debt?

Board members may be reimbursed
for their actual and necessary expenses incurred in performing their duties to the
extent provided in the agreement or the bylaws of the commission.

(c) An additional political subdivision may become a member of a commission,
and a member may withdraw from a commission, as provided in the agreement. For
an agreement to be valid, at least one commission member shall be a political
subdivision that is located in this state and a commission shall consist of at least 2
political subdivisions. A commission may not take any action under this paragraph
that would invalidate an agreement.

(d) No commission may be created under this section unless its agreement is
submitted to the attorney general, under sub. (2), before the first day of the 5th
month beginning after the effective date of this paragraph [LRB inserts date].

Q as to time period

SENATE BILL 399

1 **(4) POWERS OF A COMMISSION.** A commission has all of the powers necessary or
2 convenient to carry out the purposes and provisions of this section. In addition to all
3 other powers granted by this section, a commission may do any of the following:

4 (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

5 (b) Sue and be sued in its own name, plead and be impleaded.

6 (c) Acquire, buy, sell, lease as lessor or lessee, encumber, mortgage,
7 hypothecate, pledge, assign, or transfer any property or interest in property that is
8 located within or outside of this state.

9 (d) Enter into contracts related to the issuance of bonds.

10 (e) Issue bonds or refunding bonds, subject to sub. (5), to finance or refinance
11 a project, including funding a reserve fund or capitalized interest, payment of costs
12 of issuance and other costs related to the financing or refinancing, or credit
13 enhancement, and enter into agreements related to the issuance of bonds, including
14 liquidity and credit facilities, remarketing agreements, insurance policies, guaranty
15 agreements, letter of credit or reimbursement agreements, indexing agreements,
16 interest rate swap agreements, currency exchange agreements, commodity swap
17 agreements, and other hedge agreements and any other like agreements, in each
18 case with such payment, interest rate, currency security, remedy, and other terms
19 and conditions as the commission determines.

20 (f) Employ or appoint agents, employees, finance professionals, and special
21 advisers as the commission finds necessary and fix their compensation.

22 (g) Accept gifts, loans, or other aid.

23 (h) Establish and collect fees, plus administrative expenses, from participants
24 who benefit from the commission's services, or services provided by an outside entity,
25 and distribute the fees and expenses as provided in the agreement.

SENATE BILL 399**SECTION 3**

1 (i) Make loans to, lease property from or to, or enter into any other kind of an
2 agreement with a participant or other entity, in connection with financing a project.

3 (j) Mortgage, pledge, or otherwise encumber the commission's property or its
4 interest in projects.

5 (k) Assign or pledge any portion of its interests in mortgages, deeds of trust,
6 indentures of mortgage or trust, leases, purchase or sale agreements or other
7 financing agreements, or similar instruments, notes, and security interests in
8 property, of a participant, or contracts entered into in connection with bonds.

9 (L) Issue, obtain, or aid in obtaining, from any person, any insurance or
10 guarantee to, or for, the payment or repayment of interest or principal, or both, on
11 any loan, lease, bond, or other obligation evidencing or securing such a loan, lease,
12 bond, or obligation that is entered into under this section.

13 (m) Apply on its own behalf or on behalf of a participant to any unit of
14 government for an allocation of volume cap, tax credit, subsidy, grant, loan, credit
15 enhancement, or any other federal, state, or local program in connection with the
16 financing or refinancing of a project.

17 (n) Invest any bond proceeds or any money held for payment or security of the
18 bonds, or any contract entered into under this section, in any securities or obligations
19 permitted by the resolution, trust agreement, indenture, or other agreement
20 providing for issuance of the bonds or the contract.

21 (o) At the request of a participant, combine and pledge revenues of multiple
22 projects for repayment of one or more series of bonds issued under this section.

23 (p) Purchase bonds issued by or on behalf of, or held by, any participant. Bonds
24 purchased under this paragraph may be held by the commission or sold, in whole or
25 in part, separately or together with other bonds issued by the commission.

SENATE BILL 399

1 **(4m)** DISSOLUTION OF A COMMISSION. Subject to sub. (2) (b) and subject to
2 providing for the payment of its bonds, including interest on the bonds, and the
3 performance of its other contractual obligations, a commission may be dissolved, by
4 resolution, as provided in the agreement. If the commission is dissolved, the property
5 of the commission shall be transferred to the political subdivisions who are parties
6 to the agreement creating the commission as provided in the agreement.

7 **(5)** ISSUANCE OF BONDS. (a) A commission may not issue bonds unless the
8 issuance is first authorized by a bond resolution. A bond issued under this section
9 shall meet all of the following requirements:

10 1. The face of the bond shall include the date of issuance and the date of
11 maturity.

12 2. The face of the bond shall include the statements required under subs. (9)
13 (c) and (11) (d).

14 3. The date of maturity may not exceed 50 years from the date of issuance.

15 4. The bond shall bear a rate of interest, either fixed or variable, specified by
16 the resolution. Any variable rate of interest shall be made subject to a maximum
17 rate.

18 5. Interest and principal shall be paid at the time and place specified in the
19 resolution.

20 6. Bonds in a single issue may be composed of a single denomination or 2 or
21 more denominations, as provided in the resolution.

22 7. The bond shall be payable in lawful money of the United States or, if provided
23 in the resolution, another currency.

24 8. Bonds shall be registered as provided in the resolution.

SENATE BILL 399

SECTION 3

1 9. Bonds shall be in the form, and executed in the manner, provided in the
2 resolution.

3 (b) A bond issued under this section may include, or be subject to, any of the
4 following:

5 1. Early mandatory or optional redemption or purchase in lieu of redemption
6 or tender, as provided in the resolution.

7 2. A provision providing a right to tender.

8 3. A trust agreement or indenture containing any terms, conditions, and
9 covenants that the commission determines to be necessary or appropriate, but such
10 terms, conditions, and covenants may not be in conflict with the resolution.

11 (c) The commission may purchase any bond issued under this section. Subject
12 to the terms of any agreement with the bondholders, the commission may hold,
13 pledge, resell, or cancel any bond purchased under this paragraph, except that a
14 purchase under this paragraph may not effect an extinguishment of a bond unless
15 the commission cancels the bond or otherwise certifies its intention that the bond be
16 extinguished.

17 (d) The proceeds of a bond issued under this section may be used for a project
18 in this state or any other state.

19 (e) The commission shall send notification to the department of revenue, on
a form prescribed by the department, whenever a bond is issued under this section.

|||

19 **(6) SALE OF BONDS.** (a) The sale of bonds under this section shall be conducted
20 as provided in the bond resolution.

21 (b) A sale may be public or private. Bonds may be sold at the price or prices,
22 and upon the conditions, determined by the commission. The commission shall give
23 due consideration to the recommendations of the participants in the project when
24 determining the conditions of sale.

|||

SENATE BILL 399

1 (c) Bonds that are sold under this section may be serial bonds or term bonds,
2 or both.

3 (d) If at the time of sale definitive bonds are not available, the commission may
4 issue interim certificates exchangeable for definitive bonds.

||| *If applicable, the*
(e) ~~The~~ commission shall disclose to any person who purchases a bond issued
under this section that the interest received on such a bond is exempt from taxation,
as provided in ss. 71.05 (1) (c) 10., 71.26 (1m) (k), 71.36 (1m), and 71.45 (1t) (k).

5 **(7) BOND SECURITY.** (a) The commission may secure bonds by a trust agreement
6 or indenture by and between the commission and one or more corporate trustees. A
7 bond resolution, trust agreement, or indenture may contain provisions for pledging
8 properties, revenues, and other collateral; holding and disbursing funds; protecting
9 and enforcing the rights and remedies of bondholders; restricting individual rights
10 of action by bondholders; and amendments, and any other provisions the commission
11 determines to be reasonable and proper for the security of the bondholders or
12 contracts entered into under this section in connection with the bonds.

13 (b) A pledge of property, revenues, or other collateral by a commission to secure
14 the payment of the principal or redemption price of, or interest on, any bonds, or any
15 reimbursement or similar agreement with any provider of credit enhancement for
16 bonds, or any swap or other agreement entered into in connection with bonds, is
17 binding on the parties and on any successors. The collateral shall immediately be
18 subject to the pledge, and the pledge shall constitute a lien and security interest
19 which shall attach immediately to the collateral and be effective, binding, and
20 enforceable against the pledgor, its successors, purchasers of the collateral,
21 creditors, and all others, to the extent set forth, and in accordance with, the pledge
22 document irrespective of whether those parties have notice of the pledge and without
23 the need for any physical delivery, recordation, filing, or further act.

24 **(8) NO PERSONAL LIABILITY.** No board member of the commission is liable
25 personally on the bonds or subject to any personal liability or accountability by

SENATE BILL 399

1 reason of the issuance of the bonds, unless the personal liability or accountability is
2 the result of willful misconduct.

3 (9) BONDS NOT PUBLIC DEBT. (a) Unless otherwise expressly provided in the bond
4 resolution, each issue of bonds by the commission shall be the limited obligation of
5 the commission payable solely from amounts received by the commission from
6 revenues derived from the project to be financed or refinanced or from any contract
7 entered into or investment made in connection with the bonds and pledged to the
8 payment of the bonds.

9 (b) The state and the political subdivisions who are parties to the agreement
10 creating a commission under this section are not liable on bonds or any other contract
11 entered into under this section, or for any other debt, obligation, or liability of the
12 commission, whether in tort, contract, or otherwise.

13 (c) The bonds are not a debt of the state or the political subdivisions contracting
14 to create a commission under this section. A bond issue under this section does not
15 obligate the state or a political subdivision to levy any tax or make any appropriation
16 for payment of the bonds. All bonds issued by a commission are payable solely from
17 the funds pledged for their payment in accordance with the bond resolution or trust
18 agreement or indenture providing for their issuance. All bonds shall contain, on
19 their face, a statement regarding the obligations of the state, the political
20 subdivisions who are parties to the agreement creating the commission, and the
21 commission as set forth in this paragraph.

22 (10) AUDITS. FISCAL YEAR. (a) The board of a commission shall adopt a calendar
23 year as its fiscal year for accounting purposes. The board shall annually prepare a
24 budget for the commission.

SENATE BILL 399

1 (b) A commission shall maintain an accounting system in accordance with
2 generally accepted accounting principles and shall have its financial statements and
3 debt covenants audited annually by an independent certified public accountant,
4 except that the commission by a unanimous vote may decide to have an audit
5 performed under this paragraph every 2 years.

the capital finance office in
the department of administration

6 (c) A copy of the budget and audit shall be sent to the governing body of each
7 political subdivision which is a party to the agreement that created the commission.

8 (11) LIMITATIONS. (a) A commission may not authorize ~~federally tax exempt~~ *
9 bonds to finance a capital improvement project unless a political subdivision within
10 whose boundaries the project is to be located has approved the financing of the
11 project.

A commission may not authorize
bonds to finance a capital improvement project in this state unless all of the political
subdivisions within whose boundaries the project is to be located has approved the
financing of the project.

* Senate Amendment 2 already makes
the change that was suggested.

12 (b) This section provides a complete alternative method, to all other methods
13 provided by law, to exercise the powers authorized in this section, including the
14 issuance of bonds, the entering into of contracts related to those bonds, and the
15 financing or refinancing of projects.

16 (c) Any action brought to challenge the validity of the proposed issuance of a
17 bond under this section, or the enforceability of a contract entered into under this
18 section, must be commenced in circuit court within 30 days of the commission
19 adopting a resolution authorizing the issuance of the bond or the execution of the
20 contract.

21 (d) Bonds issued under this section shall not be invalid for any irregularity or
22 defect in the proceedings for their sale or issuance. The bonds shall contain a
23 statement that they have been authorized and issued pursuant to the laws of this
24 state. The statement shall be conclusive evidence of the validity of the bonds.

(e) 1. Before issuing bonds on any project, as that term is used in s. 231.01 (7),
in this state, a commission must receive written approval from the Wisconsin Health
and Educational Facilities Authority.

2. Before issuing bonds on any economic development project, as that term is
used in s. 234.01 (4n), in this state, or on any housing project, as defined in s. 234.01
(7), in this state, a commission must receive written approval from the Wisconsin
Housing and Economic Development Authority.

Public needs access to resolution for statute of limitations to be meaningful. Does open records law apply?

SENATE BILL 399

(12) STATE PLEDGE. The state pledges to and agrees with the bondholders, and persons that enter into contracts with a commission under this section, that the state will not limit, impair, or alter the rights and powers vested in a commission by this section, including the rights and powers under sub. (4), before the commission has met and discharged the bonds, and any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or those entering into contracts with a commission. The commission may include this pledge in a contract with bondholders.

SECTION 4. 71.05 (1) (c) 10. of the statutes is created to read:

71.05 (1) (c) 10. A commission created under s. 66.0304, if any of the following applies:".

a. The bonds or notes ~~could have been issued by the Wisconsin Housing and~~

~~Economic Development Authority and~~ are used to fund multifamily affordable

housing projects or elderly housing projects. *in this state, and the Wisconsin Housing and*

Economic Development Authority has the statutory power to issue its bonds or notes for the project being funded.

b. The bonds or notes ~~could have been issued by the Wisconsin Health and~~

~~Educational Facilities Authority and the proceeds from the bonds or notes that are~~

~~issued are used by a health facility, as defined in s. 231.01 (5), to fund the acquisition~~

~~of information technology hardware or software.~~ *in this state used in connection with such hardware,*

Facilities Authority has the statutory power to issue its bonds or notes for the project being funded.

c. The bonds or notes ~~could have been~~ issued under s. 66.1201, 66.1333, or

for the project being funded.

SECTION 5. 71.26 (1m) (k) of the statutes is created to read:

71.26 (1m) (k) Those issued under s. 66.0304, if any of the

following applies:".

are issued to fund a redevelopment project in this state or a housing project in this state, and the statutory power exists for bonds or notes to be

1. The bonds or notes could have been issued by the Wisconsin Housing and Economic Development Authority and are used to fund multifamily affordable housing projects or elderly housing projects.

2. The bonds or notes could have been issued by the Wisconsin Health and Educational Facilities Authority and the proceeds from the bonds or notes that are issued are used by a health facility, as defined in s. 231.01 (5), to fund the acquisition of information technology hardware or software.

3. The bonds or notes could have been issued under s. 66.1201, 66.1333, or 66.1335.

SECTION 6. 71.36 (1m) of the statutes is amended to read:

71.36 (1m) A tax-option corporation may deduct from its net income all amounts included in the Wisconsin adjusted gross income of its shareholders, the capital gain deduction under s. 71.05 (6) (b) 9. and all amounts not taxable to nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362. For purposes of this subsection, interest on federal obligations, obligations issued under s. 66.0304 by a commission. if the obligations could have been issued by the Wisconsin Housing and Economic Development Authority and are used to fund multifamily affordable housing projects or elderly housing projects, or by the Wisconsin Health and Educational Facilities Authority and the proceeds from the bonds or notes that are issued are used by a health facility, as defined in s. 231.01 (5), to fund the acquisition of information technology hardware or software or could have been issued under s. 66.1201, 66.1333, or 66.1335

obligations issued under s. 66.0621 by a local professional baseball
20 park district, a local professional football stadium district, or a local cultural arts
21 district, obligations issued under ss. 66.1201, 66.1333, and 66.1335, obligations
22 issued under s. 234.65 to fund an economic development loan to finance construction,
23 renovation or development of property that would be exempt under s. 70.11 (36) and
24 obligations issued under subch. II of ch. 229 is not included in shareholders' income.
25 The proportionate share of the net loss of a tax-option corporation shall be attributed

SENATE BILL 399

1 and made available to shareholders on a Wisconsin basis but subject to the limitation
2 and carry-over rules as prescribed by section 1366 (d) of the Internal Revenue Code.
3 Net operating losses of the corporation to the extent attributed or made available to
4 a shareholder may not be used by the corporation for further tax benefit. For
5 purposes of computing the Wisconsin adjusted gross income of shareholders,
6 tax-option items shall be reported by the shareholders and those tax-option items,
7 including capital gains and losses, shall retain the character they would have if
8 attributed to the corporation, including their character as business income. In
9 computing the tax liability of a shareholder, no credit against gross tax that would
10 be available to the tax-option corporation if it were a nontax-option corporation may
11 be claimed.

12 **SECTION 7.** 71.45 (1t) (k) of the statutes is created to read:

13 71.45 (1t) (k) Those issued under s. 66.0304, if any of the

following applies:

1. The bonds or notes could have been issued by the Wisconsin Housing and
Economic Development Authority and are used to fund multifamily affordable
housing projects or elderly housing projects.

2. The bonds or notes could have been issued by the Wisconsin Health and
Educational Facilities Authority and the proceeds from the bonds or notes that are
issued are used by a health facility, as defined in s. 231.01 (5), to fund the acquisition
of information technology hardware or software.

3. The bonds or notes could have been issued under s. 66.1201, 66.1333, or
66.1335.

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changes

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Drafting Instructions – Amendments to SB 399/AB 605

The attached “markup” includes incorporation of Amendment 2 to SB 399. Draft all shown amendments EXCEPT the following:

1. Page 6 – Ignore the “Q’s”
2. Page between 6 and 7 – Ignore the “Q”
3. Page 13 – Change the suggested language from, “. . .the capital finance office in the department of administration . . .” to read, “the secretary of the department of administration and . . .”

In addition to the above amendments, amend as follows:

4. Amend the LRB analysis to eliminate references “conduit” issuances. While some of the issuance activities described in the bill could be considered non-recourse conduit financings, the actual authorizations in the bill describe a much more direct and broad authority issuer.
5. Page 6, lines 4 and 5, delete the words, “unless required by the terms of the agreement.”
6. Page 11, following line 23, add a new subsection (c), “(c) Notwithstanding par. (a) or (b), the commission shall not make any pledge of tax revenues, fees, or utility revenues of a political subdivision.
7. Page 12, lines 3 and 4, Delete the words, “Unless otherwise expressly provided in the bond resolution.” Begin the remaining sentence with “Each. . .”
8. Page 13, lines 12 thru 15, delete all of sub (b).
9. Add explicit language that a commission created under s. 66.0304 is subject to all applicable portions of chapter 19.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1863/?dn

MES:.....

- date -

gs

Representative Seidel:

This version of the amendment is based on your written instructions, which referred to DOA's marked up copy of SB 399, as affected by WHEDA's changes to the tax items. Carrie Templeton of the Governor's office authorized the use of these documents.

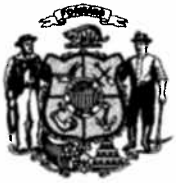
I did not include a statement of policy, which was based on similar statement of policy in s. 66.1101 of the statutes. That statement of policy was drafted in the 1970s and does not reflect current LRB policy on the inclusion of statements of legislative intent.

Our current drafting policy, as I discussed with Chris McKinny of your staff, is to not include a statement of legislative intent or findings unless the findings or intent statement could help sustain a provision for which there is a reasonable probability of a constitutional challenge, or if the bill is intended to be a recodification bill that makes no substantive changes. Neither exception applies in this amendment. A statement of legislative intent or findings is disfavored for a number of reasons, including redundancy, unforeseen effects, inconsistent use of standards for statutory interpretation, and conflicts with the substance of the statutory language. The substantive statutory provisions of a bill or amendment should contain every aspect of the requester's intent, thus obviating the need for an extra statement explaining what the bill or amendment is supposed to do. Please contact me if you'd like to discuss this matter further.

I did not include any of the provisions for possible inclusion in the amendment, described items 2, 6, and 7 of your drafting instructions, because I agree with your view that these items are not necessary.

Please let me know if you'd like any changes made to the amendment, especially the item which includes a *****NOTE, and I'll convert the amendment into an introducible form.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1863/

MES&EVM

PI
RMR
cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO 2009 SENATE BILL 399

D-NOTE
today

billist

¶ #. Page 6, line 1: delete
lines 1 and 2. /

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 5, line 24: delete that line and substitute "to the governor, who may
3 consult with any state department or agency."

4 **2.** Page 6, line 4: delete that line and substitute "agreement to take effect,
5 unless the amendment is to add a member or unless ~~as~~ otherwise".

6 **3.** Page 6, line 24: after that line, on page 2, line 3 of the material inserted by
7 senate amendment 2, after "date]." insert "Only one commission may be formed
8 under this section. If more than one agreement is submitted to the attorney general
9 before the first day of the 5th month beginning after the effective date of this
10 paragraph [revison ^{LRB} inserts date], the attorney general must give preference to the
11 agreement that submits with its documents a demonstration of support for its
12 agreement from at least one statewide organization located in this state which

- 1 represents the interests of political subdivisions and has political subdivisions
2 among its membership.”.

****NOTE: This provision is drafted according to your instructions, but what if more than one agreement meets this condition? You may need to tighten up the requirements for this tie breaker or it may not be effective.

- ③ LPS: make sure component is OK → 4. Page 11, line 4 after that line, on page 2, line 8 of the material inserted by senate amendment 2, after “purchases a” insert “tax-exempt”.

****NOTE: This item does not use the phrase “If applicable”, but I believe it more clearly reflects your intent, as described in the narrative description you submitted to describe your mark-up.

- 5 5. Page 13, line 7: after “commission” insert “and filed with the the secretary
6 of the department of administration and the legislative audit bureau”.

- 7 6. Page 14, line 10: after that line, delete the material inserted by senate
8 amendment 2 and substitute:

9 “a. If the Wisconsin Housing and Economic Development Authority has the
10 authority to issue its bonds or notes for the project being funded, the authority
11 approves of the bond issuance by the commission.

12 b. If the Wisconsin Health and Educational Facilities Authority has the
13 authority to issue its bonds or notes for the project being funded, the authority
14 approves of the bond issuance by the commission.

15 c. The bonds or notes are issued to fund a redevelopment project in this state
16 or a housing project in this state, and the authority exists for bonds or notes to be
17 issued under s. 66.1201, 66.1333, or 66.1335 for the project being funded.”.

- 18 7. Page 14, line 12: after that line, delete the material inserted by senate
19 amendment 2 and substitute:

20 “1. The bonds or notes are used to fund multifamily affordable housing projects
21 or elderly housing projects in this state and the Wisconsin Housing and Economic

1 Development Authority has the authority to issue its bonds or notes for the project
2 being funded.

3 ~~2. The bonds or notes are issued to fund the acquisition by a health facility, as~~
4 ~~defined in s. 231.01 (5), of information technology hardware in this state or software~~
5 ~~used in connection with such hardware, and~~ the Wisconsin Health and Educational
6 Facilities Authority has the authority to issue its bonds or notes for the project being
7 funded.

8 3. The bonds or notes are issued to fund a redevelopment project in this state
9 or a housing project in this state, and the authority exists for bonds or notes to be
10 issued under s. 66.1201, 66.1333, or 66.1335 for the project being funded."

11 8. Page 14, line 13: after "is" insert "renumbered 71.36 (1m) (intro) and".

12 9. Page 14, line 14: after "(1m)" insert "(intro)".

13 10. Page 14, line 17: after "71.362" insert "(A)".

14 11. Page 14, line 18: delete that line and substitute "of this subsection,
15 interest none of the following is included in shareholders' interest:".

16 12. Page 14, line 18: after that line insert:

17 "1. Interest on federal obligations."

18 (no fl) 2. Obligations issued under s. 66.0304."

19 ~~13. Page 14, line 19: after "commission" delete the underscored comma and~~
20 ~~the material inserted by senate amendment 2 and substitute~~ if the Wisconsin
21 Housing and Economic Development Authority has the authority to issue its bonds
22 or notes for the project being funded and the authority approves of the bond issuance
23 by the commission, or if the Wisconsin Health and Educational Facilities Authority
24 has the authority to issue its bonds or notes for the project being funded and the

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71.362(1m)(b)

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authority approves of the bond issuance by the commission, or if the bonds or notes are issued to fund a redevelopment project in this state or a housing project in this state, and the authority exists for bonds or notes to be issued under s. 66.1201, 66.1333, or 66.1335 for the project being funded."

<end INS B>

14. Page 14, line 19: delete "obligations" and substitute "obligations" delete that line as affected by senate amendment 2 and substitute:

15. Page 14, line 19: before "issued" insert:

"3. Obligations":

issued under s. 66.0621 by a local professional baseball

16. Page 14, line 21: delete "district, obligations" and substitute "district".

17. Page 14, line 21: before "obligations issued" insert:

"4. Obligations".

obligations

18. Page 14, line 21: delete "66.1335, obligations" and substitute "66.1335".

19. Page 14, line 21: after "66.1335," insert:

"5. Obligations".

obligations

20. Page 14, line 23: delete "and" and substitute "and".

21. Page 14, line 24: delete that line and substitute "obligations".

22. Page 14, line 24: before "issued" insert:

"6. Obligations issued under subch. II of ch. 229 is not included in shareholders' income."

23. Page 14, line 25: delete "The" and substitute:

"(b) The".

before

proportionate

insert

24. Page 15, line 13: after that line, delete the material inserted by senate amendment 2 and substitute:

(A) #. Page 15, line 11: after that line insert:

(A) Section 6d. 71.362(1m)(b)2. is created to read:

“1. If the Wisconsin Housing and Economic Development Authority has the authority to issue its bonds or notes for the project being funded, the authority approves of the bond issuance by the commission.

2. If the Wisconsin Health and Educational Facilities Authority has the authority to issue its bonds or notes for the project being funded, the authority approves of the bond issuance by the commission.

3. The bonds or notes are issued to fund a redevelopment project in this state or a housing project in this state, and the authority exists for bonds or notes to be issued under s. 66.1201, 66.1333, or 66.1335 for the project being funded.”.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1863/P1dn
MES:cjs:jf

March 18, 2010

Representative Seidel:

This version of the amendment is based on your written instructions, which referred to DOA's marked up copy of SB 399, as affected by WHEDA's changes to the tax items. Carrie Templeton of the Governor's office authorized the use of these documents.

I did not include a statement of policy, which was based on similar statement of policy in s. 66.1101 of the statutes. That statement of policy was drafted in the 1970s and does not reflect current LRB policy on the inclusion of statements of legislative intent.

Our current drafting policy, as I discussed with Chris McKinny of your staff, is to not include a statement of legislative intent or findings unless the findings or intent statement could help sustain a provision for which there is a reasonable probability of a constitutional challenge, or if the bill is intended to be a recodification bill that makes no substantive changes. Neither exception applies in this amendment. A statement of legislative intent or findings is disfavored for a number of reasons, including redundancy, unforeseen effects, inconsistent use of standards for statutory interpretation, and conflicts with the substance of the statutory language. The substantive statutory provisions of a bill or amendment should contain every aspect of the requester's intent, thus obviating the need for an extra statement explaining what the bill or amendment is supposed to do. Please contact me if you'd like to discuss this matter further.

I did not include any of the provisions for possible inclusion in the amendment, described items 2, 6, and 7 of your drafting instructions, because I agree with your view that these items are not necessary.

Please let me know if you'd like any changes made to the amendment, especially the item which includes a ****NOTE, and I'll convert the amendment into an introducible form.

Marc E. Shovers
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Shovers, Marc

From: Andrew T. Phillips [atp@phillipsborowski.com]
Sent: Friday, March 19, 2010 12:25 PM
To: Shovers, Marc
Cc: McKinny, Chris; Buhrandt, Jeff; 'Liz Stephens'
Subject: SB 399 Amendments
Attachments: Drafting Instructions for Amendment to SB 399 (031910).docx

Marc –

Thank you for taking the time to talk with me today. As we discussed, attached are comments and requests related to LRBa1863/P1. I believe that the only “difficult” item will be the tax exemption issue, which is an important issue for all involved.

If you have any questions or concerns regarding the attached, please do not hesitate to contact me. Thank you again for all of your work on SB 399 and the amendments as your drafting abilities have been invaluable in this process.

Andy

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(262) 241-1900
Fax: (262) 241-1910

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3/19/2010

Amended Drafting Instructions for Amendment to SB 399 (as amended by Senate Amendment 2)

March 19, 2010

These instructions are submitted in response to LRB's preparation of LRBa1863/P1. We offer the following comments and respectfully request the following modifications where appropriate. Unless otherwise noted, the referenced Sections refer to LRBa1863/P1.

1. In Section 2, we would like to retain lines 1 and 2 relating to the Governor's ability to forward comments to the Attorney General.
2. We agree with your revised language in Section 5.
3. In Sections 7, 8, 23 and 24, we do not believe that two layers of WHEDA/WHEFA approval are necessary, which this latest amendment draft seems to create. The language we have in Senate Amendment 2 creates two prerequisites for state and federal income tax exemption: (1) the bonds or notes could have been issued by WHEDA, WHEFA or a CDA-type entity; and (2) the bonds or notes fall within current statutory definitions of projects eligible for state and federal income tax exemption. Our understanding of the Administration's requested modifications, and the basis for our agreeing with the Administration's request, was to eliminate any assertion that a project outside Wisconsin could create an opportunity for state and federal income tax exemption based upon an argument that if WHEDA and/or WHEFA had the ability to issue bonds outside Wisconsin, the project would qualify for the dual exemption. Therefore, we believe that the simplest modification to Senate Amendment 2 would be to use the Administration's proposed language. Specifically, the Administration suggested replacing Section 11 of Senate Amendment 2 with the following (in part):

~~"a. The bonds or notes could have been issued by the Wisconsin Housing and Economic Development Authority and are used to fund multifamily affordable housing projects or elderly housing projects in this state, and the Wisconsin Housing and Economic Development Authority has the statutory power to issue its bonds or notes for the project being funded."~~

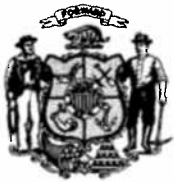
This same modification could carry through to the remaining subsections in Section 11 and all of Sections 13, 14 and 16 of Senate Amendment 2 (Sections 7, 8, 23 and 24 of LRBa1863/P1).

4. We wish to ensure that the exemption from state and federal income taxation for bonds on projects that could have been undertaken under s. 66.1201, 66.1333, or 66.1335 are subject to two prerequisites similar to that pertaining to WHEDA and WHEFA issues: (1) the bonds or notes could have been issued by an existing Housing Authority (s. 66.1201(4)), Redevelopment Authority (s. 66.1333(2m)(ar)) or Community Development Authority (s. 66.1335(1)) with the power to issue the notes in the jurisdiction where the project resides; and (2) the bonds or notes fall within current statutory definitions of projects eligible for state and federal income tax exemption. Essentially, we wish to ensure that a commission formed under SB 399 is not viewed as having the power to be considered a statewide Housing Authority, Redevelopment Authority and/or Community Development Authority.

all happen
at time of
project, a
CDA, etc,
exists &
could issue
the bonds

if project doe

5. ✓ Please verify that Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 are not substantive changes, but are modifications to create internal consistency with other provisions in SB 399.
6. ✓ **NEW ITEM:** We would like to eliminate “investment programs” from the definition of “Project” and, therefore, request the following modification to page 5, lines 8-9 of SB 399:
“(g) “Project” means any capital improvement, ~~investment or program of investment,~~ purchase of receivables, property, assets, commodities, bonds or other”



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1863/P1
MES&EVM:cjs:jf

+nwn

RMP

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY AMENDMENT,

TO 2009 SENATE BILL 399

WANTED!
MON. AM.

D-NOTE

#.
Page 5 line 8: delete "investment or program of"
Page 5 line 9: delete "investments"
At the locations indicated, amend the bill as follows:
Page 5 line 17: delete "The" and substitute "Subject to sub. (3) (d) the".
1. Page 5, line 24: delete that line and substitute "to the governor, who may

3 consult with any state department or agency."

LPS: PLS

4 Chg.
Comp.

→ 2. Page 6, line 1: delete (lines 1 and 2) "the agreement".

5 3. Page 6, line 4: delete that line and substitute "agreement to take effect,
6 unless the amendment is to add a member or unless otherwise".

7 4. Page 6, line 24: after that line, on page 2, line 3, of the material inserted by
8 senate amendment 2, after "date]." insert "Only one commission may be formed
9 under this section. If more than one agreement is submitted to the attorney general
10 before the first day of the 5th month beginning after the effective date of this
11 paragraph [LRB inserts date], the attorney general must give preference to the
12 agreement that submits with its documents a demonstration of support for its

1 agreement from at least one statewide organization located in this state which
2 represents the interests of political subdivisions and has political subdivisions
3 among its membership.”

****NOTE: This provision is drafted according to your instructions, but what if more than one agreement meets this condition? You may need to tighten up the requirements for this tie breaker or it may not be effective.

requester is not concerned about this

4 **5.** Page 11, line 4: after that line, on page 2, line 8, of the material inserted by
5 senate amendment 2, after “purchases a” insert “tax-exempt”.

****NOTE: This item does not use the phrase “If applicable”, but I believe it more clearly reflects your intent, as described in the narrative description you submitted to describe your mark-up.

6 **6.** Page 13, line 7: after “commission” insert “and filed with the secretary of
7 administration and the legislative audit bureau”.

8 **7.** Page 14, line 10: after that line, delete the material inserted by senate
9 amendment 2 and substitute:

bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in this state and the

10 “a. If the Wisconsin Housing and Economic Development Authority has the

11 authority to issue its bonds or notes for the project being funded, the authority

12 approves of the bond issuance by the commission.

bonds or notes are used by health facilities as defined in s. 231.01(5) to fund the acquisition of information technology hardware or software in a health state

13 b. If the Wisconsin Health and Educational Facilities Authority has the and the

14 authority to issue its bonds or notes for the project being funded, the authority

15 approves of the bond issuance by the commission.

16 c. The bonds or notes are issued to fund a redevelopment project in this state
17 or a housing project in this state, and the authority exists for bonds or notes to be
18 issued *by an entity described* under s. 66.1201, 66.1333, or 66.1335 for the project being funded.”

19 **8.** Page 14, line 12: after that line, delete the material inserted by senate
20 amendment 2 and substitute:

At this paragraph ... [LRB inserts date]

bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in this state and the

1 "1. If the Wisconsin Housing and Economic Development Authority has the
2 authority to issue its bonds or notes for the project being funded, the authority

3 approves of the bond issuance by the commission.

bonds or notes are used by a health facility, as defined in s. 231.01(5), to fund the acquisition of information technology hardware or software in this state and the

4 2. If the Wisconsin Health and Educational Facilities Authority has the
5 authority to issue its bonds or notes for the project being funded, the authority

6 approves of the bond issuance by the commission.

7 3. The bonds or notes are issued to fund a redevelopment project in this state
8 or a housing project in this state, and the authority exists for bonds or notes to be
9 issued *by an entity described* under s. 66.1201, 66.1333, or 66.1335 for the project being funded.

10 **9.** Page 14, line 13: after "is" insert "renumbered 71.36 (1m) (a) and".

11 **10.** Page 14, line 14: after "(1m)" insert "(a)".

12 **11.** Page 14, line 17: after "71.362." insert:

13 "(b)".

14 **12.** Page 14, line 18: delete that line and substitute "of this subsection,
15 interest ~~none~~ *of the following is included in shareholders' interest.*
any not income
obligations

16 **13.** Page 14, line 18: after that line insert:

17 "1. Interest on federal obligations, ~~obligations~~".

18 **14.** Page 14, line 19: delete that line, as affected by senate amendment 2, and
19 substitute:

20 "3. Interest on obligations issued under ss. 66.0621 by a local professional baseball".

21 **15.** Page 14, line 21: delete "district, obligations" and substitute "district,
22 obligations".

23 **16.** Page 14, line 21: before "issued" insert:

① ^{Interest on}
"4. ~~Obligations~~".

2 17. Page 14, line 21: delete "66.1335, obligations" and substitute "66.1335,
3 obligations".

4 18. Page 14, line 22: before "issued" insert:

5 ^{Interest on}
"5. ~~Obligations~~".

6 19. Page 14, line 23: delete "and" and substitute "and".

7 20. Page 14, line 24: delete that line and substitute "obligations".

8 21. Page 14, line 25: before that line insert:

9 ^{Interest on}
"6. ~~Obligations~~ issued under subch. II of ch. 229 is not included in shareholders'
10 income.".

11 22. Page 14, line 25: before "The proportionate" insert:

12 "(c)".

13 23. Page 15, line 11: after that line insert:

14 "SECTION 6d. 71.362(1m) (b) 2. of the statutes is created to read:

15 ^{Interest on}
71.362(1m) (b) 2. ~~Obligations~~ issued under s. 66.0304 by a commission if the

16 Wisconsin Housing and Economic Development Authority has the authority to issue

17 its bonds or notes for the project being funded and the authority approves of the bond

18 issuance by the commission, or if the Wisconsin Health and Educational Facilities

19 Authority has the authority to issue its bonds or notes for the project being funded

20 and the authority approves of the bond issuance by the commission, or if the bonds

21 or notes are issued to fund a redevelopment project in this state or a housing project

22 in this state, and the authority exists for bonds or notes to be issued under s. 66.1201,

23 66.1333, or 66.1335 for the project being funded."

bonds or notes are used by a health facility as defined in s. 231.01(5), to fund
the acquisition of information technology hardware or software in this
state and the

bonds or notes are used to
fund multifamily affordable housing
projects or elderly housing projects
in this state, and the

by an entity described

bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in this state and the

24. Page 15, line 13: after that line, delete the material inserted by senate amendment 2 and substitute:

1. ~~If~~ the Wisconsin Housing and Economic Development Authority has the authority to issue its bonds or notes for the project being funded, the authority approves of the bond issuance by the commission.

2. ~~If~~ the Wisconsin Health and Educational Facilities Authority has the authority to issue its bonds or notes for the project being funded, the authority approves of the bond issuance by the commission.

3. The bonds or notes are issued to fund a redevelopment project in this state or a housing project in this state, and the authority exists for bonds or notes to be issued ~~under s. 66.1201, 66.1333, or 66.1335~~ ^{by an entity described} for the project being funded.

(END)

bonds or notes are used by a health facility as defined in s. 231.01(5) to fund the acquisition of information technology hardware or software in this state and the

LRBa1863/1dn
MES: nwn:

P-NOTE

Representative Seidel; Date
The changes made to s. 71.36(1m) of the statutes (sections 9 to 21 of the /P1 version of the amendment, and the corresponding parts of the /1 version) are technical changes that have no substantive effect.

MZA

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1863/1dn
MES:nwn:rs

March 22, 2010

Representative Seidel:

The changes made to s. 71.36 (1m) of the statutes (sections 9 to 21 of the /P1 version of the amendment, and the corresponding parts of the /1 version) are technical changes that have no substantive effect.

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